



1-19-07

DAC  
JFW

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CAIMI et al.

CASE NO: BB1356 US PCT

SERIAL NO: 10/009,791

GROUP ART UNIT: 1638

FILED: NOVEMBER 5, 2001

EXAMINER: P. BUI

FOR: DISEASE RESISTANCE FACTORS

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

1. The above-identified application became abandoned for failure to file a proper reply to a notice or action by the United States Patent and Trademark office. The date of abandonment was the day after the expiration date of the three-month period set for reply in the Non-Final Office Action mailed June 2, 2004, plus any extensions of time obtained.

2. The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

3. Applicants' unintentional abandonment occurred as follows. On December 2, 2004, exactly the six-month date for responding to the June 2, 2004, Non-Final Office Action, Applicants filed a continuing application, currently in prosecution as Ser. No. 11/002,562 ("the '562 application") to the 10/009,791 application ("the '791 application"). The transmittal papers for the continuing application, attached herewith, noted the Applicants' desire to claim priority back to the '791 application, as well as to the PCT and provisional applications in the application chain (PCT/US00/11956 and U.S. Patent Application Ser. No.

60/133,041, respectively). Applicants in error, however, neglected to file a three-  
01/22/2007 HLE333 00000025 10009791

01 FC:1453 1500.00 DA

month extension of time in the parent application to establish co-pendency between the '791 application and the '562 application, which is Applicants' routine procedure when continuations are filed. Thus, the application actually became prematurely abandoned on September 3, 2004, instead of becoming abandoned, as desired, and as assumed to be the case, on December 3, 2004. Without realization of the actual premature abandonment date, in a telephonic interview, Applicants' counsel, on or around March 2, 2005, agreed with the Examiner of the '791 application that the '791 application had been abandoned. The error, which both Applicants and the USPTO failed to recognize, was only recently discovered by Applicants upon examination of the papers in this case for other reasons. If Applicants' counsel had known all of the facts as they are accurately established now, Applicants' counsel would not have agreed that the '791 application was to go abandoned and would have made every effort to revive the application prior to receiving a Notice of Abandonment from the USPTO. Because Applicants' counsel was not aware of all of the facts on or around March 2, 2005, and because such facts have only come to light recently, Applicants respectfully submit that counsel's action were not an intentional abandonment of the application and, as such, that the present Petition should be granted.

4. For the required reply to the Non-Final Office Action, accompanying this petition is a Continuing Application of the 10/009,791 Application. See MPEP § 711.03(c)(II)(2)(a) ("The required reply to a non-final action in a non-provisional application abandoned for failure to prosecute may be . . . the filing of a continuing application under 37 CFR 1.53(b) . . .").

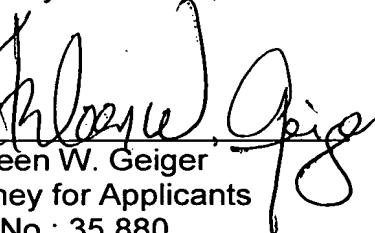
5. The fee for a Petition to Revive Unintentionally Abandoned Application under 37 C.F.R. § 1.17(m) of \$1,500.00 is hereby authorized to be charged to Deposit Account No. 501447 (Potter Anderson & Corroon LLP).

6. Other than fees associated with the continuing application filed concurrently herewith, Applicants believe that there are no other fees associated with this submission; however, should an additional fee be due, please charge such fee to Deposit Account No. 501447 (Potter Anderson & Corroon LLP).

Ser. No. 10/009,791  
Docket No. BB1356 US PCT

Respectfully submitted,

By:

  
Kathleen W. Geiger  
Attorney for Applicants  
Reg. No.: 35,880  
Telephone: (302) 984-6075  
Facsimile: (302) 658-1192

Dated: January 18, 2007